

**APPROVED 1-22-04**



**SCOTTSDALE DEVELOPMENT REVIEW BOARD  
KIVA - CITY HALL  
3939 N. DRINKWATER BOULEVARD  
JANUARY 8, 2004  
MINUTES**

**PRESENT:** Tom Silverman, Council Member  
E.L. Cortez, Vice Chairman  
Jeffery Schwartz, Planning Commission Member  
Michael D'Andrea, Design Member  
Anne Gale, Design Member  
Jeremy Jones, Design Member  
Michael Schmitt, Design Member

**STAFF:** Donna Bronski  
Scott Hamilton  
Jayna Shewak  
Bill Verschuren  
Greg Williams  
Al Ward

**CALL TO ORDER**

The regular meeting of the Scottsdale Development Review Board was called to order by Councilman Silverman at 1:00 p.m.

**ROLL CALL**

A formal roll call confirmed members present as stated above.

**OPENING STATEMENT**

**COUNCILMAN SILVERMAN** read the opening statement that describes the role of the Development Review Board and the procedures used in conducting this meeting.

**MINUTES APPROVAL**

December 18, 2003 DRB Minutes

**VICE CHAIRMAN CORTEZ MADE A MOTION TO APPROVE THE DECEMBER 18, 2003, MEETING MINUTES AS PRESENTED. SECOND BY MR. D'ANDREA.**

**THE MOTION PASSED BY A VOTE OF SEVEN (7) TO ZERO (0).**

**CONSENT AGENDA**

180-DR-1985#14	Mayo – TGen Research Bldg Site Plan & Elevations 13400 E. Shea Blvd Deutsch Associates, Architect/Designer
83-DR- 2003	Sweetwater & 94 <sup>th</sup> St. Wireless Communication Facility (WCF) Site Plan & Elevations NEC Sweetwater & 94 <sup>th</sup> St Velocitel, Inc, Architect/Designer

(COUNCILMAN SILVERMAN OPENED PUBLIC TESTIMONY.)

**SUZI SPIESMAN**, 9377 E. Dreyfus Place, spoke in opposition to this request. She stated if you look at all four corners of the intersection there are many boxes on three of the four corners. She further stated she took pictures of many of the corners on Sweetwater and 94<sup>th</sup> Street, and she counted the number of boxes and there are eight. She provided information on the number of boxes on other corners in the area. She inquired why should one corner have so many boxes when another has less.

(COUNCILMAN SILVERMAN CLOSED PUBLIC TESTIMONY.)

**MS. SHEWAK** stated that staff has stipulated that this box be screened with landscaping. She further stated that this is one of the smaller boxes they have seen and staff felt with the landscaping that it would be adequately screened.

92-DR-2003	Sprint-Shurgard Wireless
------------	--------------------------

Communications Facility (WCF)  
Site Plan & Elevations  
8615 E. McDowell Rd  
T-Mobile, Applicant

**VICE CHAIRMAN CORTEZ MOVED TO APPROVE CASE 180-DR-1985#14, 83-DR-2003 AND 92-DR-2003 WITH THE ATTACHED STIPULATIONS. SECOND BY MR. JONES.**

**THE MOTION PASSED BY A VOTE OF SEVEN (7) TO ZERO (0).**

**ITEM FOR RECONSIDERATION**

119-DR-1998#2                      Potaes Del Sol  
Wall Site Plan & Elevations  
7506 E. Cholla Dr.  
Planning & Development  
Consulting, Applicant

**MR. WILLIAMS** presented this case as per the project coordination packet. Staff recommends denial. Staff recommends a wrought iron fence on concrete piers to maintain the open space and provide security.

**MS. SHEWAK** remarked the Board has received numerous pieces of legal correspondence from the attorney's for both sides. She reviewed the legal questions that have been raised and provided staffs' response to those issues.

**COUNCILMAN SILVERMAN** commented this appears to be turning into a legal situation and that makes him uncomfortable because that is not the charge of the DR Board. He requested that Ms. Bronski explain where the City is on this legal matter.

**DONNA BRONSKI**, City Attorney's Office, stated the City has received legal letters from lawyers on both sides and an additional one that came in this morning that was provided to the Board. She further stated there are a variety of issues. She reviewed Section 1.901 of the Code noting that would address most of the issues. Section 1.901 General Purpose section the last sentence reads: "Development review is intended to enrich the lives of all the citizens of Scottsdale by promoting harmonious, safe, attractive and compatible development, and is therefore consider to be in furtherance of public health, safety, and general welfare". She reported this provision is most at issue because there are arguments on both sides as to what is an acceptable wall and what is the charge before you. She further reported that in its simplest form this case is no different than any other perimeter wall case that the Board has

considered. The DR Board has the opportunity to look at the aesthetics of the wall. They will hear on one side that they can only consider the paint and the color. They will hear on the other side that also goes to the structure.

Ms. Bronski remarked she thought it was within the Board's purview to decide based on the neighborhood's general characteristics as well as existing building and construction has been to date what the Board believes in their best judgment aesthetically works on this wall.

Ms. Bronski stated there are a couple of legal issues that have come up in the correspondence. One about whether there is a burden of proof. Under the City Code in Section 1.902 it states: "It shall be the responsibility of the applicant to prove that the intent and purpose established in Section 1.901 will be accomplished". There is nothing different today the Board needs to make their judgment based on the facts.

Ms. Bronski stated another issue that has come up frequently is the issue of precedent. She further stated precedent is not as big of an issue as it might be and it could mask the general purpose. She remarked that every one of the cases that comes before the Board is fact specific and relates to the neighborhood that they are in and the particular development. There are almost no cases that would have identical facts so the issue of precedence is not as relevant to their determination as looking at the purpose in Section 1.901. She concluded the Board should focus on this case as they would any other wall case before them.

**MR. JONES** stated he felt the issue for most people is how binding was the agreement that was reached when this property was established. It appears that there is not an objection to the wall it is more whether it is solid or open. He further stated there are side issues regarding whether a solid wall is safer which most police reports say no. He remarked that there was an agreement made when this parcel was established that seems to be a statement of intentions and does not seem to have been legally setup to be binding. Ms. Bronski stated her understanding if there was an agreement between neighbors and the original developer not to enclose this part it was not incorporated into stipulations or into private a written agreement. Ms. Shewak stated the City of Scottsdale generally does not stipulate anything they don't believe is fully enforceable in the future and that is why that stipulation is absent for the case. She further stated the approval was an expectation but not a legal binding document. Ms. Bronski stated given the facts there is nothing that prevents the Board from making a determination one way or the other on the location of this fence.

**VICE CHAIRMAN CORTEZ** stated it is his understanding that the City Council is going to be considering an ordinance provision that would prohibit any perimeter

walls on subdivision such as this one. Ms. Shewak stated that provision would be included in the ESLO and does not apply to this area of the community. Vice Chairman Cortez stated for future cases he would like staff to give the Board a heads up when that ordinance is approved so they can deal with the issues at hand.

**LOU JEKEL**, Jekel and Howard, 8283 N. Hayden Road, legal counsel representing the applicants. He stated that Darren Frame who is the President of the Homeowners Association would be the spokesman for this group. He stated he would like to address the purpose clause and burden clause in Section 1.902 and take those in context with Section 1.904. It outlines the DR criteria noting that subsection D and F were particularly relevant because they address the issue of appropriateness to the neighborhood and character. He further reported the walls that line both sides of the street already set the character of the neighborhood. He showed pictures of the character of the area and walls in the area.

Mr. Jekel stated the question is why should this property be burdened with a requirement that the rest of the properties don't have. He further stated that no argument has been brought up against this wall except that the people in the neighborhood simply don't want it. He remarked there is not a health, safety, or welfare issue. They are in a situation where the wall is being challenged for no reason. He concluded that they would request approval.

(COUNCILMAN SILVERMAN OPENED PUBLIC TESTIMONY.)

**DARREN FRAME**, 11730 N. 76<sup>th</sup> Court, stated that he is the HOA President and that he would be speaking on behalf of the homeowners. He further stated that this is a case of differing opinions on security, privacy, and whether this is a park. There is a difference of opinion regarding whether a solid wall is safer than a wrought iron wall. He remarked normally when there are differences of opinion it is believed that a compromise is the best situation. He further remarked he would like to address why a compromise is not the best solution. He reported that all of the homeowners have agreed they want to build a solid wall that matches the aesthetics of the neighborhood. Their objectives are to have a safe, secure area for their children to play. He noted the other issue aesthetic appeal noting they would make this the nicest wall in the area.

He noted with regard to compromise they have stumbled into a hornet's nest of outside neighborhoods that were outraged by the original developer. They can't do anything about that. He further noted that it appears that the people outside of their neighborhood would not be happy with anything other than open space because they are currently walking their dogs on their property so they are not going to please them. He concluded if they were to come to them and say all of

the Portales Del Sol homeowners would like to from now on be able to pass judgment on any of the changes made down the street to their homes. They would probably say they were crazy but this is no different. This is private property and they pay the taxes and maintain the area. They would request approval of the solid block wall.

**EDIE BROUHARD**, 7686 E. El Rancho Drive, stated that when this property was sold they fully expected it to be developed and they knew the open area would not be there. They were concerned about the perimeter wall because it was different from the community. They had large lots and horse privileges and was use to open space. They did not have a vendetta against the Developer and came to an agreement. One of the agreements was that there would not be a screen wall in the retention area and now they want to build a solid wall. She reported that they have tried to communicate with them but they were not interested in talking. They thought there was an agreement with the City. They thought the City would honor that agreement. They would prefer no wall but would compromise with a see through wall. She concluded the DR Board has the opportunity to dictate the type of wall.

**TRISHA FLEISCHER**, 11625 N. 76<sup>th</sup> Way, stated they just moved into this neighborhood from southern California and they moved into this development because of its openness. They did not want to move into a development style neighborhood. She further stated that they are in support of an open style structure. She remarked that in the guidelines it states the structure should be in harmony with the neighborhood. They are the neighborhood and they would like them to recognize that. She further remarked they are willing to meet in the middle. She reported that the city pools are considered safe with wrought iron fences as well as churches and day cares all consider wrought iron fences to be safe structures for their children to be inside. She commented that she did not see why that would not be considered safe for the people who wish to use this space.

**MARK ATANOVICH**, 7676 E. El Rancho Drive, spoke in opposition to this request. He stated based on his understanding of the rules under which this Board operates they should not be debating this issue because at the December 4<sup>th</sup>, meeting the motion on the application resulted in a tie vote that means the application was denied. Also the motion for continuance resulted in a tie vote and that means the application died. However, for some strange reason on December 18<sup>th</sup>, there was a motion to reconsider. He remarked in his mind the reversal contradicts with Robert's Rules. He further remarked the approval of this application would nullify all development agreements reached in good faith between developers in the City unless prohibited by law. He noted that the approval of this application would set a dangerous precedence.

**JIM BROUHARD**, 7686 E. El Rancho Drive, spoke in opposition to this request. He presented pictures that showed the character of the surrounding neighborhood. He noted that all of the walls he presented enclosed backyards and the fronts of the homes are open to the street. He reported that he has discussed this issue with many of the neighbors and he has a petition signed by 39 homeowners that represent 25 residents who object to the solid wall. He concluded the DR Board has the right to dictate the appearance of the wall.

**KURT ALCLUMBRAC**, 7650 E. Cortez Road, stated that prior to 1998 that 10-acre parcel was an open, active horse property. Their children rode there; they had a good time enjoying that 10 acres. He further stated as part of the DR process in 1998 a compromise was made with the developer that the retention basin would remain open to leave some of the 10 acres open to the residents. He remarked that he did not think anyone wants to deny the homeowners their rights all they are asking is that a compromise be made to preserve some open space. He further remarked that he would not want his children to play in the bottom of a retention area that receives heavy metal contaminants on a regular basis.

**JIM LANE**, 7666 E. El Rancho Drive, stated they are an existing neighborhood that has been open and safe for a long time. He further stated his concern is looking at the compatibility of the neighborhood. He further reported five years ago they came to a solution and he did not see any reason why the decision should be reversed now. He noted that he felt the open wall would help preserve some of the openness of the neighborhood.

**ALAN KAUFMAN**, 8711 E. Pinnacle Peak Road, stated he was representing the 39 individuals that signed the petition. He further stated that he would not go over the legal arguments that were in the documents they received from them earlier this week. He remarked this is a classic example of just because you have the right to do it does not make it the right thing to do. They believe the applicant does not have the right to build a solid wall based on the things written in the fax. Even if the applicant did have that right it is not the right thing to do. He noted that the City staff does not think there should be a solid wall. He further noted this is brought back before them on a legally questionable motion not brought by a member of the prevailing side. He reported this is a matter of public policy and not personal preference. The neighbors relied on what happened in 1998 and they believed the issue was closed. The neighbors are willing to compromise. He concluded the right thing would be to deny the solid wall and direct staff, the applicant, and the neighbors to bring back to the Board a creative solution that everyone would accept.

(COUNCILMAN SILVERMAN CLOSED PUBLIC TESTIMONY.)

**MR. JEKEL** stated that after all of the discussion it comes down to the fact that the neighbors don't want this. They have not given one reason that fits under Section 1.904 that sets out the criteria of what and how you make your judgments. He further stated they are asking the Board to look at the compatibility issue, and look at what everyone else has and allow their client to build a wall on the property they feel is necessary for their needs.

**VICE CHAIRMAN CORTEZ** asked why a 50 percent solid and visual wall would not provide safety. Mr. Jekel stated that he felt safety and privacy are in the minds and rights of the people who own the land and if this fits the character because there are no other open walls in the neighborhood then be believed this is safer for them.

Vice Chairman Cortez stated that over 75 percent of the character of the street is open. He further stated that nothing has changed since the last hearing so he asked how this Board was to reevaluate this solid wall based on the character of the neighborhood. Mr. Jekel stated they still have to look at the character of the walls that are there. He further stated all they are saying is that they are not asking for anything different than what everyone else has and that to him is compatibility.

**MR. JONES** stated that he was disappointed that there was not a single overwhelming argument that makes this clear. He further stated that the Developer made an agreement with the neighborhood and the Developer built the property the way he said he would without the wall. Then the present community proposed building a wall. They got a building permit and started the wall. The reason this is before the Board is because there is a disagreement between the smaller community and the larger community and it is their job to take a community level view and see what is appropriate. There has not been a good case against a 50 percent wall. Making something identical is different from making it compatible. There has not been a case that the use of wrought iron would be incompatible with this design.

He reported that every city he has been involved with does indicate that a fully enclosed unsupervised space is the most dangerous space. He further reported they have every right to build the wall and they have no right to deprive them the right to build the wall. He remarked he felt the 50 percent open wall achieves the objectives of the community and is compatible with the neighborhood.



**MR. SCHWARTZ** inquired if in a R1-35 or R1-43 district would each one of those properties be allowed to enclose their entire yard with a wall without having to come through and get Design Review approval. Ms. Shewak replied in the affirmative.

**MR. SCHMITT** stated that he liked the character of the older homes and the openness of this neighborhood. He further stated that he felt because this development imposed a different character the Developer did make concessions to the neighborhood in order to win support and those neighbors. He remarked that he felt the developer's word is as good as a written contract. Unless the neighbors in this area who are on the receiving end of the commitment have agreed to change their position or relinquish the benefit of that commitment then it is still a commitment that needs to be honored.

He commented that he was disappointed that the people who live in Portales are being inflexible in dealing with the neighbors in trying to find a win/win solution without alienating an established neighborhood. He concluded that he would not support a solid wall but would support a wall that is found acceptable to the adjoining neighborhood.

**MS. GALE** stated she wanted to be sure that as they reconsider this that the landscaping remain in place - those being the trees and size and plants and quantity remain the same as are along the existing wall. Ms. Shewak stated they would look for consistency with any new landscaping.

Ms. Gale remarked that it was too bad that this neighborhood did not have more harmony because one of the most visually distracting things about 76<sup>th</sup> Place is the fact that the street easements are not all in place. The street has to make these terrible jogs and is full of yellow and black signs. She further remarked they need to get together to take care of that.

She stated she would support the staff recommendation for a partly closed, partly open wall, as a compromise to start bridging the two neighborhoods, which she felt, was more important than a wall.

**COUNCILMAN SILVERMAN** stated that it speaks highly of the neighbors to compromise and accept an open gate. He further stated the bottom line is that the people bought in a gated walled community and that he felt the people in the community deserved to finish the wall the way they wanted. He added they are not enclosing that big of an area.

**COMMISSIONER SCHWARTZ MOVED TO APPROVE CASE 119-DR-1998#2 WITH THE SOLID WALL. SECOND BY MR. D'ANDREA.**

**VICE CHAIRMAN CORTEZ** stated that a commitment was made and this Board needs to honor those commitments because it sets bad precedence if they differ from that point of view regarding the solid wall. He further stated that there was no issue that Portales property owners do have the right to build a wall but he believed it is the purview of this Board to act upon the character and aesthetic of the existing wall being brought before them today. He reported that he would not be in support of the motion.

**MR. JONES** inquired if they were to do a 50/50 wall and part of it is wrought iron is there was any reason that the residents could not grow vines over the wrought iron to make it a private wall. Ms. Shewak replied they could install landscaping without a permit or approval process.

**MR. SCHWARTZ** stated that he felt they should go by the merits of the case today because the Developer is not here to defend his actions and they have nothing to prove that area was promised to be kept open in perpetuity.

**MR. D'ANDREA** stated that he was originally against having the wall. The reason he was against it because the walls on that street are not inviting. He further stated later after having a chance to meet with the homeowners and walk around the community he would agree that they have the right to put up the wall so he would support the wall that the property owners of Portales want to build.

**COUNCILMAN SILVERMAN** called for the vote.

**THE MOTION PASSED BY A VOTE OF FOUR (4) TO THREE (3) WITH VICE CHAIRMAN CORTEZ, MR. JONES, AND MR. SCHMITT DISSENTING.**

#### **REGULAR AGENDA**

5-PP-2003                      Desert Estates at Pinnacle Peak  
                                        Preliminary plat  
                                        SEC of 132<sup>nd</sup> St. & Dynamite  
                                        GEO Dimensions, Engineer

**MR. WARD** presented this case as per the project coordination packet. Staff recommends approval, subject to the attached stipulations.

**TOM RIEF**, Land Development Services stated that there is an active cattle ranch on the property. He further stated the area is rural in character and primarily undeveloped with an R1-170 zoning. He remarked based on the size of the parcel they would be allowed 88 units but the plan is for 74 units. This request for 74 lots with amended development standards will provide a subdivision that blends with the existing character of the area. He further

remarked that the plan has been refined and the revised plan is more sensitive. He noted that about 50 percent of the site would be open space. He presented information on the neighborhood discussions. He commented they are committed to working with staff and the neighbors. He reported they are not proposing perimeter walls. He presented information on the drainage for the site and erosion control measures. He discussed the sewer issues associated with the site noting they have agreed to up to 24 lots to be developed with septic as a temporary solution while the city undergoes and completes their analysis of waste water in the area. He also commented that they are not proposing streetlights.

Mr. Rief stated that this proposal complies with the city requirements for trails. He further stated that some of the neighbors would like to have a trail within the wash. He noted that this wash historically has not been used for public trail and the ownership felt it would create safety and maintenance issues.

Mr. Rief stated they would request some flexibility allowed with regard to the stipulation on turn lanes to be constructed along Dynamite for west bound traffic on 136<sup>th</sup> and 132<sup>nd</sup> because they don't feel there would be a lot of traffic coming from Rio Verde entering the site. They would like the flexibility to commission a traffic study to better understand the traffic patterns, and if the traffic warrants the turn lanes they would put them in, but if it does not warrant the traffic lanes they would like the flexibility to work with staff to remove that requirement. He further stated there is a stipulation under drainage that requires access to the drainage basins and it defines very specifically how access would be provided, and they would like the opportunity to have flexibility to work with staff on the exact location of that access.

**MR. JONES** inquired if there was anything about the diagonal trail through the wash that connects to other existing trails where the needs are not met with the perimeter trail that the City has in the master plan. Mr. Hamilton provided an overview of trails locations on the master plan for this area. He stated from a staff level they would not be able to stipulate the applicant to dedicate the trail in the wash but they would gladly accept it as a public trail.

**MR. D'ANDREA** inquired if there would be horse privileges on this property. Mr. Hamilton stated the area surrounding does allow equestrian rights. He further stated typically if the CC&Rs don't prohibit it would be allowed.

**MR. SCHWARTZ** requested clarification on the septic issue.

**DAVID GULINO**, Land Development Services, provided a brief overview of the conversations with the Water Resources Department related to the septic. He stated the City is in the middle of a study trying to figure out this issue. Doug

Mann, Water Resources Engineer, City of Scottsdale, stated they are currently doing a study to determine the feasibility of water service for this area so they are not in the position to say that sewer is a recommended method to provide waste water service for this area. He further stated that he would like to make it clear that the 24 units were conceded to because of discussions with Scottsdale National and to make pump system work. He noted that they wanted time to finish the study.

(COUNCILMAN SILVERMAN OPENED PUBLIC TESTIMONY.)

**NENA HENRY**, 27411 N. 152<sup>nd</sup> Street, stated she is representing her membership of 470 members. She discussed the flood concerns in this area. She remarked that run off is a serious problem. She commented on the septic system issues in the County. She requested that they look very carefully at trail access because there are a lot of horses in this area.

**TONY NELSEN**, 7736 E. Redbird Road, stated he would like to speak to the appropriateness of allowing equestrian trail access in that wash. He further stated it makes sense. He remarked this is historically an equestrian area.

**SAM WEST**, 8160 N. Hayden Rd. #I-210, stated this is a rural equestrian area. He discussed his concerns regarding the drainage in this area. He stated on page 13, Stipulation No. 5 reads: "Storm Water Storage Requirement: The developer has received an approved storm water storage waiver. There are no in lieu fees for this project as per the storm water storage waiver." He commented he finds conflict between this statement and other statements that allude to how to deal with the control of water. He remarked this site is rolling and he would like to see something done to grant some sort of relief on the street standards that the City normally enforces for street slope so that this project can follow the terrain because it reduces the erosion and drainage problems by doing so. He noted with regard to sewer they need to look at the end result.

He stated horses are in this area and this project needs to embrace it and if they don't it would not follow the spirit of the General Plan. He further stated the State Statute makes a provision whereby if an owner dedicates an easement all liability incurred will be removed from them. He concluded the last item is regarding a bus stop stipulation because he felt there needs to be a provision added to deal with that issue.

(COUNCILMAN SILVERMAN CLOSED PUBLIC TESTIMONY.)

**MR. RIEF** stated regarding the bus stop it is his understanding that it is at the discretion of the Cave Creek School District. The Engineer with SKG Enterprises addressed the drainage issues. The Engineer stated they comply with the City

guidelines with regard to run off. He provided an overview of the drainage issues associated with this site.

**MR. GULINO** provided additional information regarding the septic. He reported that there is still a lot of work that needs to be done on this project that will be done in the final design phase. He further reported regarding the horse trails his client has concerns regarding security and privacy. He noted that with regard to the liability issue that is not as much of a concern as security and privacy.

**MR. JONES** stated the it would seem that the wash would be the best place to put the wash. Mr. Gulino stated that he did not think that this wash had any special significance to warrant a horse trail.

**COUNCILMAN SILVERMAN** inquired if Scottsdale National property has a master trail through the middle of the property. Mr. Hamilton replied in the affirmative. The trail on the wash is in the development agreement and came about through citizen input.

**MR. SCHMITT** inquired if the city felt there is significant benefit given by a trail dedicated diagonally through this property or are the equestrian needs adequately met on the trails that are already being contemplated. Mr. Hamilton stated the trail of Dynamite and the trail on 136th would meet the goals of the trails master plan.

**COUNCILMAN SILVERMAN** commented on the fact his biggest concern is regarding the drainage. He further commented that he was a little concerned about the amount of water that would be pouring through this development.

**MR. SCHMITT** stated Mr. Rief indicated the developer would like relief on a couple of the stipulations. He inquired about staff's position on that request. Mr. Ward stated staff would be prepared to modify the stipulations to the extent that it would leave some flexibility and allow them to get information back from the traffic engineer to look at.

**MR. SCHWARTZ MOVED TO APPROVE CASE 5-PP-2003 WITH THE ATTACHED STIPULATIONS AND WITH THE FOLLOWING MODIFICATIONS:**

- 1) THE APPLICANT WORKS WITH STAFF ON A VIABLE SOLUTION WITH THE TRAFFIC STUDY FOR THE TURN LANES ON DYNAMITE BOULEVARD.**
- 2) THE STIPULATION REGARDING THE LIMITING THE NUMBER OF UNITS HAVING A SEPTIC TANK TO 24 BE REMOVED AND NO LIMITS**

**BE PLACES ON THE NUMBER OF SEPTIC TANKS ON THE DEVELOPMENT.**

**SECOND BY MR. JONES.**

**MR. JONES** inquired if they would consider the variation on the stipulations separately. Ms. Shewak stated they would need to consider the motion as presented by Mr. Schwartz.

Mr. Jones requested clarification on the septic tank situation. Mr. Schwartz stated his point was that he did not think it was fair to restrict this development to the number of units they can develop just because the city does not have a viable solution. Mr. Mann stated the Water Resources Department would not have an issue with deleting the 24 units; that was a guideline to enable the city to fully evaluate the report and make a determination.

**COUNCILMAN SILVERMAN** stated that today was the first time that he has heard about the study. He further stated that he was under the impression that Scottsdale National was going to pay to bring the sewer line from 114<sup>th</sup> or wherever it is now so that both of these developments would connect to the sewer system but that might not be the case. Mr. Mann replied that may not be the case. They have not had the opportunity to complete the study and fully evaluate the impacts of putting sewer in this area. Councilman Silverman commented that he thought it was ridiculous that they don't have the answer and it makes him nervous putting all the septic tanks in all the washes in an area where this is the first go around.

**MR. SCHMITT** stated that he would agree with Mr. Schwartz that it seems unnecessary to put restrictions on the developer pending something they are uncertain about. If no harm would be caused by allowing septic on the property, why would they not do that.

**VICE CHAIRMAN CORTEZ** stated the reason he is against this motion is because they are taking the 24 number out of the stipulation and let it open to what ever is needed and they could possibly have 74 septic tanks and disrupt the soil conditions even further. He further stated he would rather keep the 24 and see what happens.

**MR. SCHWARTZ** stated they need to remember if sewer were not a viable option at all, they would not be having this discussion. Vice Chairman Cortez stated if sewer is not a viable option then he did not want to approve 74 septic tanks.

**MR. D'ANDREA** stated he would be in favor of approving it without the 24 and if they have to come back with the 74 then so be it.

**MR. GULINO** stated that he appreciates Mr. Schwartz' position but they don't want to get into a situation where they would jeopardize their approval because they can live with the 24.

**COUNCILMAN SILVERMAN** inquired if Mr. Schwartz wanted to remove the stipulation regarding the septic tanks.

**MR. SCHWARTZ AMENDED THE MOTION TO LEAVE IN THE STIPULATION REGARDING THE 24 UNITS.**

**COUNCILMAN SILVERMAN** stated that he would not support the motion. He stated what is bothering him is that Scottsdale National put the trail through their property and he could understand why they would not want to but this is an equestrian area and he felt their property would be sending the wrong message.

**THE MOTION PASSED BY A VOTE OF FOUR (4) TO THREE (3) WITH COUNCILMAN SILVERMAN, VICE CHAIRMAN CORTEZ AND MS. GALE DISSENTING.**

#### **ADJOURNMENT**

With no further business to discuss, the regular meeting of the Scottsdale Development Review Board was adjourned at 3:55 p.m.

Respectfully Submitted

"For the Record" Court Reporters